In the High Court of Judicature at Madras

Dated: 18/11/2004

Coram

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice C. NAGAPPAN

Writ Appeal No.487 of 1998

1. Member, Appropriate Authority
Income-tax Department
108 Nungambakkam High Road
Chennai 600 034.

2. Union of India rep. by Secretary
to Government
Ministry of Finance
New Delhi. .. Appellants

-vs-

1. M. Ravindranath
2. B.S. Purushotham
3. D. John Alfred .. Respondents

Appeal under clause 15 of the Letters Patent against the order of the Honourable Mr.Justice R. Jayasimha Babu dated 08.08.1997 and made in the exercise of the Special Original Jurisdiction of the High Court in Writ Petition No.8620 of 1994 presented under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records in proceedings No.AA/MDS/10/(264) 12/92-93 dated 21.12.1992 of the first respondent, declare the provisions of Section 264 UA (b) (iii) and Rule 48-I ultravires and quash the aforesaid proceedings of the first respondent.

!For appellants : Mr. T. Ravikumar
Senior Standing Counsel for
Income Tax

^For respondents : Mr.V.Ramachandran,Sr.Counsel
1 and 2 for Mr. A.R. Karunakaran.

For 3rd respondent: Mr. R. Thiyagarajan,Sr.Counsel
for Mr. M. Muthappan.

:JUDGEMENT

(Judgment of the Court was delivered by P. SATHASIVAM,J.,)

The respondents 1 and 2 in W.P.No.292 of 1993, aggrieved by the order of the learned single Judge dated 08.08.1997, setting aside the order of the Appropriate Authority (Income-tax Department) dated 21.12.1992, have preferred the above writ appeal.

2. For convenience, we shall refer the parties as arrayed before the learned single Judge.

3. Initially, Vatsala Ramachandran entered into an agreement with D. John Alfred - third respondent on 30.09.1992, wherein she agreeing to sell the property comprising land and buildings measuring about 4 grounds and 1,555 sq.ft., bearing Corporation Door No.22, Casa Major Road, Egmore, Madras for a total consideration of Rs.67,50,000/-. The agreement provided that the same was to be filed with the Appropriate Authority under the Income-tax Act and in the event of the said Authority issuing a No Objection Certificate, the sale has to be completed within 45 days from the date of issuance of such certificate. Subsequent to entering into the aforesaid agreement, the petitioner and the third respondent filed a statement in Form 37-I before the Appropriate Authority (hereinafter referred to as "the Authority"), Income-tax Department - first respondent, enclosing copy of the Agreement on 13.10.1992. On perusal of the agreement, the Authority issued a show cause notice dated 03.12.1992, calling upon the petitioner to show cause why an order for purchase of the property should not be made under Section 269 UD (1) of the Income-tax Act (in short "the Act") for an apparent consideration of Rs.65,67,800/-. In the show cause notice, the Authority has stated, after detailed examination of all the relevant materials, including the prevailing market value in the area where the property is located, it is found that the apparent consideration of Rs.65,67,800/- is less than the fair market value of the property by more than 15% for the reasons set out in the notice. Adopting the land value at Rs.18.50 lakhs per ground, the Authority estimated the value of the property in question at Rs.87.68 lakhs.

4. The petitioner and the third respondent submitted their objections to the aforesaid notice on the basis of the show cause notice. In the reply, the petitioner pointed out the difference between the two properties, namely, the property in respect of which Agreement of Sale was entered into and the property in comparison. It is further stated that the property, which is the subject matter of Agreement was a residential property, situated in front of the School, which was a major disadvantage for a residential property. The building on the property was very old and not fit for accommodation. It was also submitted that Casa Major Road is more residential area than commercial and consequently the rate per ground adopted, namely, Rs.18 lakhs is arbitrary and excessive. The comparative case of property situate at No.2, Second Avenue, Casa Major Road, comprising of approximately half a ground of land and built up area of 540 sq.ft. conveyed in the month of February, 1992 for Rs.4,46,000/-. The guideline value in respect of the said area was Rs.3.48 lakhs per ground. Taking into consideration of the aforesaid facts, the consideration agreed between the petitioner for the transfer of property was

more than reasonable and there was no basis or justification for estimating the market value of the property at Rs.18.50 lakhs per ground, in addition their arbitrary estimate of value of the superstructure.

5. The first respondent - Authority, rejected the objections raised by the petitioner and the third respondent and by an order under Section 269 UD (1) of the Act, ordered the purchase of the aforesaid property by the Central Government for a sum of Rs.65,67,800/-. In the same order, the Authority directed that the property shall vest in the Central Government from the said date and the transferor or any other person shall surrender and deliver possession of the same to the Appropriate Authority within 15 days from the date of service of the order. The said order was questioned in the writ petition, namely, W.P.No.292 of 1993. Pending disposal of the writ petition, the petitioner, namely, Vatsala Ramachandran died. One M. Ravindranath and B.S. Purushotham were substituted in the place of the deceased petitioner as per the order of the Court dated 19.03.1997. The learned Judge, after considering the show cause notice, reply given by the petitioner and the third respondent, order passed by the Authority, after holding that the choice of addition of 15% to the value of the other property cannot be said to be reliable, rational, objective addition, quashed the order of the Authority directing preemptive purchase and allowed the writ petition; hence, the present appeal by the Authority and the Union of India.

6. Heard Mr. Ravi Kumar, Senior Standing counsel for Income-tax, Mr. V. Ramachandran, learned senior counsel for respondents 1 and 2 and Mr. R. Thiyagarajan, learned senior counsel for the third respondent.

7. The only point for consideration in this appeal is, whether the order of the Authority dated 21.12.1992 is sustainable and the learned Judge is right in quashing the same?

8. There is no dispute that Section 269 UD (1) of the Act enables the Appropriate Authority to make an order for the purchase by the Central Government in respect of any immovable property at an amount equal to the amount of apparent consideration after receipt of the statement under Sub-section (3) of Section 269 UC of the Act, subject to certain conditions. Sub-section (1A) mandates that before making an order under sub-section (1), the Appropriate Authority shall give a reasonable opportunity of being heard to the transferor, the person in occupation of the immovable property if the transferor is not in occupation of the property, the transferee and to every other person whom the appropriate authority knows to be interested in the property. It is also incumbent on the part of the Appropriate Authority to specify the grounds on which it is made. There is no dispute regarding the power of the Authority, the right of preemptive purchase and also the fact that the petitioner and the third respondent were given show cause notice and opportunity of being heard.

9. It is seen that Form 37-I statement was furnished on 13.10.1992 and the consideration for the transfer is set out therein is Rs.67,50 ,000/-.

The extent of property is four grounds and 1,555 sq.ft., In the show cause notice the property taken for comparative is 1 ground and 1,350 sq.ft., which is very nearer to the property of the petitioner, had been sold for Rs.,29,75,000/-, which worked out a rate of Rs.16.12 lakhs per ground and according to the Authority the consideration as set out in the agreement between the petitioner and the third respondent worked out to a figure which was much less than the same, and therefore, there was under valuation presumably with the intention to avoid payment of income tax.

10. The Authority while comparing the property, which is located on a dead end cross road of about 30 feet width, called Second Avenue and the petitioner's property, which was right on Casa Major Road itself, the width of the same is 40 feet road, based on the report of the Executive Engineer, arrived a conclusion that the value of the petitioner's property was higher by 15% over and above that of the property situated at Second Avenue, Casa Major Road on a dead end cross. The learned Judge noticed that the figure of 15% which was mentioned by the Executive Engineer was not set out in the notice. The learned Judge has also observed that it is only by the addition of 15% that the Appropriate Authority could possibly claim that there had been under valuation and if the rate at which the property sold on the Second Cross Road had been adopted, there would have been no basis whatever for alleging any under valuation. The learned Judge has also considered the dictum laid down by the Supreme Court in 199 ITR 500 (C.B. Gautam vs. Union of India and others). It is also seen from the order of the learned Judge that it is only by reason of the addition of 15 % to the value of the other property that under valuation has been arrived at and no reasons are forthcoming as to why the figure of 15% had been adopted. After finding that the choice of the figure of 15% additional, cannot be said to be a reliable, rational and objective addition, quashed the order of the Authority.

11. While attacking the said conclusion of the learned Judge, the learned counsel for Revenue - appellants vehemently contended that this Court exercising the power under Article 226 of the Constitution of India cannot consider the matter as an Appellate Authority going into the factual details. Though the counsel has submitted several decisions on this aspect, inasmuch as it is a settled legal position that while hearing the writ petition against the order made under Section 269 UD(1) of the Act, the Court is not expected to hear the matter like an appellate authority sitting in judgment over the order of the Appellate Authority and reviewing and re-appreciating the findings recorded by it, it is unnecessary for us to refer the same. We are not basically concerned with the decision, but with the decision making process. However, where the rules of natural justice shown to have been violated or the order suffers from perversity, this Court can interfere.

12. It is also useful to refer the Constitution Bench judgment of the Supreme Court reported in (199 ITR 530), wherein it is held, the very historical setting in which the provisions of this Chapter were enacted indicates that it was intended to be resorted to only in cases where there is an attempt at tax evasion by significant undervaluation of immovable property agreed to be sold. This is strengthened by instruction No.1A 88 issued by the Central Board of Direct Taxes. The powers of compulsory purchase conferred

under the provisions of Chapter XX-C are: intended to be (and are being) used only in cases where, in an agreement to sell an immovable property in an urban area to which the provisions of that chapter apply, there is a significant undervaluation of the property by 15 per cent or more. If the appropriate authority is satisfied that the apparent consideration shown in the agreement for sale is less than the market value by 15 percent, or more, it may draw a presumption that this undervaluation has been done with a view to evading tax. Such a presumption, however, is a rebuttable and the intending seller or purchaser an lead evidence to rebut it. Moreover, the reasons for such acquisition which are required by Section 269 UD to be in writing must be germane to the object for which the chapter was introduced, namely to counter attempts to evade tax.

13. We have already observed that there is no dispute regarding compliance of natural justice, namely affording opportunity of being heard. However, as rightly observed by the learned Judge, the comparable property is located at a dead end cross road of about 30 feet width called Second Avenue, taking off from Casa Major Road. It is also close to the petitioner's property, which was right on Casa Major Road itself. It is also not in dispute that the width of Casa Major Road is 40 feet. Further the extent of the comparable property is 1 ground and 1,350 sq.ft., whereas the property purchased is 4 grounds and 1,555 sq.ft., In the light of the locational advantages, after accepting the opinion of the Executive Engineer, the Authority has added 1 5% value to the property purchased and arrived a conclusion that there is under valuation just to evade income tax. We also perused the report of the Executive Engineer, which is in Annexure II. The Engineer, after referring the location, address of the property, extent of land, extent of building, year of construction, value of the building and land, depreciated cost of building and land, etc., has concluded that,

"As the location of the property in the instant case is on the main Casa Major Road as against the location of the case under comparison on a Cross road, which is also dead end road, off Casa Major Road, the fair market rate of land in the instance case can be considered to be atleast 15% more. "

Based on the same, ultimately the Executive Engineer arrived the total market value of the property in question at Rs.87.68 lakhs. As rightly observed by the learned Judge, there is no concrete basis to fix 15% more. In the absence of acceptable material, as rightly observed, there is no reason to fix the figure as 5% or 10% or even 20% , we are satisfied that the Authority has merely adopted the figure furnished by the Executive Engineer and as rightly observed by the learned Judge, the same was blindly adopted. Since the conclusion arrived at by the Authority is based on the statement of Executive Engineer, which is not supported by acceptable material, we are in agreement with the conclusion of the learned Judge that the choice of the figure of 15% on addition is not a rational and objective addition and it is arbitrary and the order of Authority suffers from perversity.

Under these circumstances, we do not find any error or infirmity in the order impugned and it does not warrant interference; on the other hand, we are in agreement with the conclusion arrived at by the learned Judge.

Accordingly, the writ appeal fails and the same is dismissed. No costs.

Index:Yes
Internet:Yes
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To

1. Member, Appropriate Authority
Income-tax Department
108 Nungambakkam High Road
Chennai 600 034.

2. The Secretary to Government
Ministry of Finance
Union of India
New Delhi.